Supreme Court U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC C. HANSEN -- PETITIONER

VS.

CALDWELL DIVING COMPANY, INCORPORATED; EMPLOYER'S INSURANCE OF WAUSAU; UNITED STATES DEPARTMENT OF LABOR, Division of Longshore Harbors Workers; BENEFITS REVIEW BOARD, UNITED STATES DEPARTMENT OF LABOR --RESPONDENT (S)

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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37 pp

QUESTION (S) PRESENTED

The within case involves important questions of federal law concerning the Longshore Harbors Workers Act found at 33 901 – 950 (hereafter the LHWCA) and the constitutional rights of a injured maritime employee to recover damages due to injuries suffered upon navigable waters of the United States. The extra ordinary circumstances involved concern serious conflicts of federal law between the so-called mutually exclusive federal maritime Acts developed by the United States Congress commonly known as the LHWCA and the Jones Act. It is the following questions the injured maritime employee respectfully asks this honorable Court to answer.

QUESTION #1

Is a maritime employer acting in their dual capacity as a employer and vessel owner permitted to avoid all liability to its injured employee by taking and maintaining inconsistent positions as to the employees status as either a Longshoreman or a seaman under the so-called "mutually exclusive" federal maritime acts?

QUESTION #2

Is it unconstitutional for a maritime employer whom is acting in their dual capacity as a employer and vessel owner to be insured for all liability under

the LHWCA, Jones Act and General Maritime Laws by the same insurance company?

QUESTION #3

Is a maritime employer permitted to avoid an adjudication of the employees status by voluntarily providing LHWCA compensation and medical care under the LHWCA for extended periods of time in a attempt to gain a unfair advantage over its employee to only later assert a defense alleging the employee's claims are barred by statue of limitations under the Jones Act?

QUESTION #4

Is a maritime employer acting in their dual capacity as both the employer and vessel owner permitted to be inconsistently named in each of their separate capacities in an attempt to abuse the mutually exclusive nature and judicial process between the LHWCA and Jones Act? The LHWCA employer identified to the United States Department of Labor as Caldwell Diving Company Incorporated while the Vessel owner is identified as Caldwell' [S] Diving Company Incorporated.

QUESTION #4

Under the above circumstances can a factiously named employer or its carrier assert any valid lien under the LHWCA?

QUESTION #5

Is a maritime employer acting in their dual capacity (alter ego) permitted to be represented by separate law firms in each of their dual capacities in order to assert inconsistent and conflicting defenses?

QUESTION #6

Is a maritime employer and insurer under the above circumstances permitted by law to assert and waive a assumed LHWCA lien within a state third party action by submitting a LHWCA section 908 (i) application?

QUESTION #7

Is duration of two days sufficient to establish seaman status v. LHWCA status?

LIST OF PARTIES

ERIC C. HANSEN – CLAIMANT / PETITIONER

VS.

CALDWELL DIVING COMPANY, INCORPORATED

EMPLOYER'S INSURANCE OF WAUSAU;

UNITED STATES DEPARTMENT OF LABOR,

Division of Longshore Harbors Workers; And

BENEFITS REVIEW BOARD, UNITED STATES DEPARTMENT OF LABOR –RESPONDENT (S)

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2) The Office of Administrative Law Judges
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4) The Third and Fourth Circuit Court of Appeals.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that writ of certiorari issue to review the judgment below.

[X] For cases from federal courts

The opinion of the United States court of appeals appears at Appendix F to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but has not yet reported

[X] is unpublished

JURISDICTION

[ ] For cases from federal courts

The date on which the United States Court of Appeals decided my case was

February 13, 2001

[X] No petition for rehearing was timely filed in my case

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for writ of certiorari was granted to and include _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) The Longshore Harbors Workers Act (LHWCA) 33 USC § 901 – 950
2) FRCP pursuant to Rule 9 (h) in Admiralty
3) The Jones Act, 46 U.S.C.A. § 688
4) The General Maritime laws of the United States
10) U.S. Constitution

STATEMENT OF CASE

Eric C. Hansen a resident of New Jersey and a 10 year veteran commercial whom at the time of injury was employed by Caldwell Diving Co., Incorporated. (hereafter Caldwell) and a Union member since 1986 of the Commercial Divers Union Local 1457 of New York. Mr. Hansen is married with two children. On April 17, 1991 while working aboard a crane barge owned by Caldwell upon navigable waters of the United States off the South Carolina State Port Authority, South Carolina. Mr. Hansen suffered career-ending injuries due to a failure of the barges crane causing the boom to free-fall causing serious injuries to Mr. Hansen.

Subsequently, Caldwell filed a state of New Jersey workers compensation injury report, however shortly thereafter the employer's insurance carrier Employers Insurance of Wausau (hereafter Wausau) on April 26, 1991 notified the United States Department of Labor Division of Longshore Harbors Workers (hereafter DOL) by letter and filed the required forms LS-202 and LS-206 on behalf of Caldwell. The letter from the carrier advised the DOL that the carrier was unable to file a LS-201 and requested a copy of the form be forwarded to their office.

Caldwell between April 18, 1991 and January 5, 1994 claim to have voluntarily provided compensation in the disputed amount of $84,456.61 and medical care in the

disputed amount of $96.703.43 pursuant to the LHWCA. On November 27, 1993 Mr. Hansen's then attorneys filed a complaint in the South Carolina court of common pleas alleging Jones Act damages and damages under the General Maritime Laws case # 93-CP-07-1926. In retaliation to the state filing on January 5, 1994 nearly 3 years later the employer/carrier controverted the LHWCA claim by filing a LS- 208 alleging Mr. Hansen was not covered under the LHWCA alleging Mr. Hansen was more properly classified as a seaman. At which time the employer/carrier ceased all forms of compensation and medical care. At no time did Mr. Hansen make any election between his rights and remedies. On January 21, 1994 Caldwell by letter "terminates" Mr. Hansen's employment with Caldwell due to his lengthy absence. With the termination of employment Caldwell also terminates all other sources of collateral health care coverage and income. It should be further noted that the employer and/or the vessel owner to date has failed and refused to provided maintenance and cure as obligated under the general maritime laws.

From 1991 to December 1993 Wausau's claims supervisor Mr. Christopher McKenna had held himself out as agent for Caldwell and represented that Wausau held coverage for the LHWCA, Jones Act and General Maritime Laws. In late December 1995, Wausau's claim supervisor informed Mr.

Hansen's attorney that he was mistaken and that Wausau did not hold the Jones Act and General Maritime coverage as previously represented. As a result Mr. Hansen's attorney filed the 1st amendment to the state complaint naming the third parties and "alternate" causes of action under section 905-b of the LHWCA against the vessel. Shortly thereafter Wausau's LHWCA attorney Mr. Steven Darling with the law firm of Sinkler & Boyd P.A. claimed a LHWCA lien in the amount of approximately $181,160.04 i.e. ($84,456.61 in LHWCA compensation plus $96,703.43 in LHWCA medical care).

Over 4 years after the accident on August 11, 1994 Caldwell in their capacity as vessel owner of the crane barge file a complaint for Exoneration or Limitation of Liability in the U.S. District Court District of Columbia South Carolina case # 9:94-2174-19 which apparently caused a stay to the state third party action. It now appears that Wausau U.K. Underwriters was in fact Caldwell's insurer contrary to Mr. McKenna's representations in December 1994. Caldwell and Wausau in their capacity as vessel owner were represented by three different law firms in the Limitation of Liability action 1) John Eric Olson of the Law firm of Hill Rivkens & Hayden LLP of New York 2) D.A. Brockinton Jr. of the law firm Brockinton, Brockinton & Kerr of Charleston South Carolina and 3) Robert G. Clawson of the law firm Clawson & Staubes LLC of Charleston South Carolina. Between August 1994

and September 1995 limited discovery was conducted within the Limitation of Liability action. The District Court scheduled a hearing for October 1995. Although directly prior to the hearing taking place Caldwell motioned to the District Court to dismiss their own Limitation of Liability action alleging Mr. Hansen was not a seaman and the crane barge did not meet the criteria of a vessel, rather the barge was a floating platform, therefore the plaintiff Caldwell to the action had no valid Limitation of Liability action.

In short, the LHWCA employer Caldwell and carrier Wausau in their so-called "mutually exclusive" capacities under the Federal Maritime laws toke "inconsistent" defenses. In other words the LHWCA employer Caldwell alleging Mr. Hansen was a seaman while at the same time the Vessel owner and Seaman's employer also Caldwell alleging the crane barge did not qualify as a vessel and that Mr. Hansen was more properly covered under the LHWCA. Thus the reason Caldwell dismissed its own Limitation of Liability action and the reason Caldwell failed and refused to provide Maintenance & Cure under the General Maritime Laws to its injured employee.

As a result of the Districts Court dismissal of Caldwell's Limitation of Liability action, it appears the stay was lifted on the South Carolina State court action.

As a result of the Limitation of Liability action combined with the employers refusal to provide any source on income or compensation under either the LHWCA or General Maritime laws Mr. Hansen and his family members were forced into a poverty and necessitous situation and were deep in debt as a direct result of the injuries suffered while employed. Of major importance is the fact that for reasons unknown Mr. Hansen fell through the cracks of the United States Department of Labors procedures and fell into what has become known as the "Zone of Uncertainty". *See Harbor Tug and Barge Co. v. Papai 117 S.Ct 1535 (1997) and McDermott International Inc. v. Wilander 498 U.S. 337, 356 (1991) and Chandris Inc, Latsis 515 U.S. 347, 368-369 and McDermott Inc. v. Boudreau 679 F.2d 452 (5th Cir 1982) and Fontenot v. AWI, Inc, 923 F.2d 1127 (5th Cir. 1991).* Supported by the fact that no court of law had ever litigated or adjudicated Mr. Hansen's status as either a Longshoreman or a seaman prior to the ALJ finding in August 1998. It is hereby alleged that this was the bad faith intention of the employer/carrier in order to gain a economic unfair advantage over Mr. Hansen and his family. Further supported by the fact that had Mr. Hansen's status been actually determined either way it is approached the employer Caldwell and its insurance carriers Wausau would be exposed to liability under either the LHWCA and section 905-b if found to be a longshoreman or under the Jones Act

and the General maritime laws if found to be a seaman. Thus yet another reason as to why Caldwell dismissed their own limitation of liability action in order to prevent a finial adjudication of Mr. Hansen's status by the South Carolina District Court. In other words the employer and carrier perceived that by preventing the adjudication of Mr. Hansen's status would allow them the opportunity to continue to maintain "inconsistent" positions under both the LHWCA and section 905-b as well as the Federal Admiralty laws Jones Act, Unseaworthiness, General Maritime laws, Maintenance and Cure, Failure to provided Maintenance and Cure, Retaliatory discharge of employment etc. In short it is alleged the employer and carriers attempted to escape all liability known as an *"end around"* by taking inconsistent positions in their perceived so-called mutually exclusive capacities as a maritime employer. *See McDermott Int'l v. Wilander 498 U.S. 337, 26 BRBS 75 (CRT) (1991) and Swason v. Marra Bros., Inc., 328 U.S. 1,7 (1946) and Pizzitolo v. Electro-Coal Transfer Corp., 812 F.2d 977 (5th Cir. 1987) cert denied, 484 U.S. 1059 (1988). Also see General Construction Co.., Inc. v. Embry 1993 W.L. 137413 (N.D. Cal 1990)* While at the same time force the plaintiff into a poverty and necessitous situation by denying compensation and medical care in order to gain a unfair advantage over the plaintiff in the state third party

action due to Mr. Hansen's need to survive and support his family members.

In January 1996 unknown to Mr. Hansen the third party action was again amended a second time for reason not yet discovered the state complaint did not assert complaints for Maintenance and Cure nor was Mrs. Hansen named as a additional plaintiff under section 905-b of the LHWCA. At which point the third party defendants offered to Mr. Hansen 1 million dollars, which was refused due to the fact that Mr. Hansen's damages are believed to ranged between 3 and 4 million dollars.

On February 15, 1996 Hansen was instructed by the state court to attend what was represented to be a hearing for date certain. Mr. Hansen requested the February hearing be recorded for the record however this request was refused stating the South Carolina State Court did not permit the recording of the hearing. During the hearing the "third party" defendants made a second offer to Mr. Hansen of $1,138,860.00 (One million one hundred thirty eight thousand eight hundred dollars) plus a 100% 'Full waiver of the represented LHWCA lien in approximately $181,160.00 (One hundred eighty one thousand dollars). It was represented to Mr. Hansen the total value was $1,320,020.00. During the hearing Mr. Hansen argues he was placed under extreme duress and made to feel he had no option other then to accept

the "third party defendants offer". At the time Mr. Hansen believed he would still be entitled to pursue a final adjudication of his status and pursue legal remedies accordingly against his "employer" whom now claims they did not participate in the state third party state action. Furthermore it must be pointed out that on February 15, 1996 the defendants had no releases prepared nor was any statement placed on the record. It was not until April 15, 1996 that a "draft" of the "third parties" "proposed" releases were forwarded to the plaintiff Mr. Hansen. Upon the receipt of the proposed release Mr. Hansen found the releases unacceptable due to the fact defendants releases also proposed to release all parties known or not yet discovered which was not the intention or understanding of Mr. Hansen on February 15, 1996 and Mr. Hansen did not understand the contents of the proposed releases nor were the contents explained. Additionally the defendant's releases proposed that Mrs. Hansen's claims would also be released despite the fact she was not ever named as a party to the third party action. Further noting that at no time was Mr. Hansen delivered what was then referred to as a "clincher agreement" now known as a LHWCA section 908 (i) application nor was Mr. Hansen ever advised of any such document. (See Appendix G)

As a result of the disputes surrounding the proposed releases additional disputes arose between Mr. Hansen and his

attorneys whom demanded and insisted he sign the releases as originally proposed and represented to Mr. Hansen that he had no choice but to sign the releases. At which point Mr. Hansen notified and confirmed to all parties that he would not sign the releases as proposed. The defendants refused to revise the proposed releases and instead, the defendants in May 1996 filed with the South Carolina State Court of Common pleas a motion to compel the so-called settlement. The court ordered a hearing to be held on June 12, 1996 and order Mr. Hansen to be present. Mr. Hansen was notified of the hearing on June 11, 1996 and instructed to travel to South Carolina overnight to attend.

Directly at the onset of the hearing the defendants "withdrew" their motion to compel, thus ending the motion. However Mr. Robert Clawson proceeded to produce for the first time what is now known as the LHWCA section 908 (i) application and requested the court force Mr. Hansen to sign the document instead of a release, after a brief discussion and representation that additional re-education cost and medical cost would be included and accounted for the following day. Noting that the section 908(i) application was never previously provided to Mr. Hansen nor had Mr. Hansen's attorneys ever advised Mr. Hansen concerning any such document or explained its meaning. Again under extreme duress, threats and pressure from not only the court and

defendants and even his own attorneys Mr. Hansen signed the LHWCA section 908(i) application without its understanding. As a result of the signing of the LHWCA section 908(i) application the state Court immediately issued a Dismissal with prejudice of the third party action. It is hereby alleged that the state court was without proper jurisdiction to entertain or dismiss a plaintiff's cause of action based upon a signing of only a LHWCA section 908 (i) application prior to the DOL review and approval or denial.

On June 13, 1996 Mr. Hansen was scheduled to be at his attorneys office to work out the details of the additional re-education costs and medical cost owed to Mr. Hansen. Upon his arrival at Mr. Raley's office Mr. Hansen was advised that no additional re-education or medical cost would be included. Subsequently Mr. Raley issued Mr. Hansen two checks, the 1st check issued by Wausau Insurance Companies check # 3103347344 in the amount of $135,000.00 (one hundred and thirty five thousand dollars) and the 2nd check issued by Raley & Associates in the amount of $359,802.15 (Three hundred fifty nine thousand eight hundred and two and fifteen cents). The total of proceeds issued to Mr. Hansen out of the $1,320,020.00 after deductions of attorneys claimed fees at $379,721.91 and attorneys claimed cost of $84,928.18 and further withholding and deduction of the so-called claimed value of the alleged LHWCA lien pending the DOL approval

in the amount of $181,160.04 was $491,355.71. The brake down of distributions is as follows.

Plaintiff Eric C. Hansen..... $491,355.71

Attorneys claimed Fees.....$379,721.91

Attorneys claimed costs.....$84,928.18

Withholding of the LHWCA lien funds pending DOL approval.....$181,160.00

Total withholdings.....$645,810.09

Plaintiffs proceeds from 3rd party action.....$491,355.71

On June 14, 1996 the employers/carriers LHWCA attorney submitted the signed section 908 (i) application to the United States Department of Labor, which was found to be incomplete and did not contain the required information pursuant to the LHWCA.

On June 21, 1996 attorney Steven Darling representing the employer/carrier wrote in response to the DOL request for additional information concerning the section 908 (i) application in pertinent part Mr. Darling stated: *Furthermore the longshore carrier did not agree to the third party settlement and therefore any further claim for benefits under the LHWCA are extinguished under Section 33 of the Act.*

On October 3, 1996 Mr. Charles Raley by letter to the DOL withdrew his name as counsel for the claimant.

On July 15, 1996 the District Director of the DOL Ms. Jeana F. Jackson wrote to Mr. Darling requesting additional

information concerning the section 908 (i) application and advised Mr. Darling that the DOL was "tolling" until the requested information has been received.

Due to the continued disputes in December 1996 Mr. Hansen requested his case be placed before the office of Administrative Law Judge for the United States Department of Labor for the adjudication of his status and determination of the employers/carriers LHWCA lien.

On December 12, 1996 the DOL claims Examiner Mr. Charles Coffey advised one of Mr. Hansen's former attorneys and the employer/carrier that Mr. Hansen had requested a referral to the Office of Administrative Law Judge's and that the DOL was *"shelving" the issue of the Section 8(i)* until such time as a new petition has been submitted and Mr. Hansen has agreed to proceed.

In December 1997 Mr. Hansen appeared Pro Se and the Employer Caldwell and Carrier Wausau represented by Mr. Steven Darling appeared before the ALJ in Camden New Jersey where testimony was taken. Upon the ALJ suggestion Mr. Hansen obtained local counsel and a second hearing was conducted.

On August 7, 1998, the ALJ issued an Order Denying Mr. Hansen benefits under the LHWCA. The ALJ order stated in pertinent part: *I find Claimant was a Seaman as defined by the Jones Act, and therefore a member of a crew of the crane*

barge Cohen 165 in accordance with section 902 (3) of the LHWCA. Consequently, Mr. Hansen is excluded from coverage by the provisions, and I do not consider the issues enumerated 2 through 4 above (See ALJ Order Appendix B)

Shortly thereafter on September 14, 1998, Mr. Darling wrote to Mr. Hansen's former attorneys Mr. Robert Moran requesting the funds which remained withheld from the third party action be released to the Employer/Carrier as a result of the ALJ finding that Mr. Hansen was a Seaman. In short the Employer/Carrier claimed the ALJ finding validated its so-called LHWCA lien and requested the funds be paid to the Employer/Carrier, which is contrary to the Employer/Carriers representation on February 15, 1995 that the LHWCA lien was fully waived in the prior state action. Subsequently, Mr. Hansen's former attorney's refused to release the monies to either Mr. Hansen or the Employer/Carrier without a Consent Order or written agreement between Mr. Hansen and Wausau.

On September 16, 1998, Mr. Darling wrote to the ALJ requesting a Supplementary Order be issued requiring the release of the funds to Employers Insurance of Wausau.

On September 25, 1998 the ALJ Honorable Judge Ainsworth H. Brown responded to Mr. Darlings request stating that he no longer had jurisdiction in the matter whereas Mr. Hansen had already appealed to the United States Benefits Review Board. Judge Brown further wrote: *Even if there*

would have been no appeal my jurisdiction over monies held by Mr. Moran would appear to be obscure as the withholding seems to be part of the South Carolina litigation.

On September 7, 1999 despite the above confusion, the BRB affirmed the ALJ Order again denying Mr. Hansen LHWCA coverage and refused to address the disputed funds. (See BRB Order affirming ALJ Appendix C) Mr. Hansen therefore requested reconsideration of the BRB Order, which was denied on February 23, 2000.

On March 14, 2000 Mr. Hansen filed an Appeal to the U.S. District Court of Appeals for the 3rd Circuit case # 00-3233.

On March 24, 2000 Mr. Steven Darling whose admittance into the 3rd Circuit Court of Appeals was sponsored by Mr. John Eric Olson on behalf of the Employer/Carrier motioned the 3rd Circuit Court of Appeals for the dismissal of the case alleging that the Third Circuit lacked jurisdiction pursuant to the LHWCA.

On April 4, 2000 Mr. Hansen file a notice of Appeal to the U.S. 4th Circuit Court of Appeals as a protective action due to the Employer/Carriers motion to dismiss the 3rd Circuit case to dismiss case # 00-1443.

On May 4th 2000 the 3rd Circuit Court of Appeals Granted the Employers/Carriers Motion to dismiss sighting it lack of jurisdiction.

As a result of the above Orders finding Mr. Hansen held the status as a Seaman. As a protective action On August 8, 2000 Mr. Hansen and Mrs. Hansen filed a complaint in Admiralty against his employer with the U.S. District Court of New Jersey case #00-3805 alleging damages pursuant to FRCP 9(h) in Admiralty under the Jones Act and Unseaworthiness under the General Maritime Laws, Negligence under the General Maritime Laws, Failure to provided Maintenance and Cure under the General Maritime Laws, and Retaliatory discharge of employment under the General Maritime Laws against Caldwell Diving Co., Inc., Mr. James D. Caldwell, Mrs. Marion Caldwell, The Caldwell Group and A through F individuals and R through Z companies.

On October 5, 2000 the Employer and Vessel owners represented by Mr. John Eric Olson motioned the Court for dismissal of the Hansen's complaint alleging the theory that Mr. & Mrs. Hansen's claims were time barred due to the arguable passing of a three-year statue of limitation and by the theory of Res Judicata and the so-called Entire Controversy Doctrine seemingly alleging the South Carolina state third party action settled had been fully funded and the employer participated in that action which is clearly contrary to the LHWCA employers representations to the ALJ, BRB, 4th Circuit Court of Appeals and the 3rd Circuit Court of Appeals.

Mr. & Mrs Hansen argued the Employer and Vessel owners were judicially estopped (estoppel) as a result of the employer/vessel owners and their insurance carriers inconsistent positions and bad faith and that since Mr. Hansen's status was never actually litigated or adjudicated prior to the ALJ finding that Mr. Hansen was a seaman as of August 7, 1998 that the arguable 3 year statue of limitations were not triggered to begin until Mr. Hansen and Mrs. Hansen became aware of his true status and therefore Mr. & Mrs. actual rights and remedies in accordance with the ALJ opinion. Furthermore, Mrs. Hansen was never named as a plaintiff to any other action whereas the Hansen's were unaware of their rights and remedies.

On November 30, 2000 the U.S. District Court Granted the Employers and Vessel owners motion to dismiss and granted their motion for Sanctions against Mr. Hansen for pursuing his legal rights and remedies by issuing a injunction against Mr. Hansen to prevent Mr. Hansen from filing any other action without the consent of the District Court and warning Mrs. Hansen of the same.

On December 14, 2000 Mr. & Mrs. Hansen filed notice of Appeal with the United States Court of Appeals for the Third Circuit case # 00-4331 which at the time of this writing is currently pending before the Court.

On February 13th 2001 the U.S. Court of Appeals for the 4th Circuit Affirmed the Benefits Review Boards Order of February 23, 2000 denying LHWCA benefits and compensation.

As a result of the confusing and conflicting so-called "mutually exclusive" Federal Maritime workers compensation Acts and given the extra ordinary circumstances above, we the petitioners whom have been denied our legal rights and remedies under both the LHWCA and the Jones Act as well as the General Maritime Laws respectfully pray this honorable court recognizes the injustice and inhuman results which have taken place due to the nature of conflicts created by the maritime laws and mutually exclusive maritime workers compensation acts. It is our opinion the time has come for the United States Supreme Court and the United States Congress recognize the unfair advantage a maritime employer and insurer's have over a injured maritime employee which we find unconstitutional in accordance with section 950 of the LHWCA.

REASON FOR GRANTING THE WRIT

Currently, Mr. & Mrs. Hansen are being denied their constitutional rights to recover damages under the LHWCA, Jones Act and General Maritime laws as a result of a work related injury which occurred upon navigable waters of the

United States which is contrary to the United States Congresses intention when enacting the federal maritime workers compensation schemes.

The within case clearly demonstrates the unfair advantage a employer and insurer have over a maritime employee and further makes it clear that in a situation such as this in which a maritime employer is acting within their dual capacity as both the employer and vessel owner and proper procedures are not followed by the United States Department of Labor or the employer and their insurer pursuant to the LHWCA wrongly afford the employer/carrier the opportunity to prevents a finial adjudication of a employees status. And as a result placing a injured employee with the "zone of Uncertainty" of coverage under the so-called mutually exclusive Federal Maritime Acts and General Maritime Laws.

For the past 10 years the Hansen's have been denied their constitutional rights as a result of the employer and carriers inconsistent position and defenses in their perceived mutually exclusive capacities as a employer. The fact remains and it can not be any more obvious by the mere fact that Caldwell in their capacity as a LHWVCA employer alleges Mr. Hansen was a seaman, thus the reason the LHWCA employer and carrier (Employers Insurance of Wausau) alleges they have a valid LHWCA, thus the reason the employer/carrier controverted the LHWCA claim in 1994 and

denied medical care and compensation. While on the other hand and at the same time the employer only in their capacity as a Seaman's employer Caldwell and their insurers (Wausau Insurance Companies) alleges Mr. Hansen was covered by the LHWCA, thus the reason the vessel owner and the seaman's employer failed and refused to provide Mr. Hansen with maintenance and cure and dismissed their own Limitation of Liability action in August 1995.

Clearly the a maritime employer is responsible for either compensation and medical as a result of a work related injury under either the LHWCA or Maintenance and Cure. However in this case currently the LHWCA employer and carrier are attempting to assert a LHWCA lien against a prior third party action they represent that the employer or carrier did not participate in and did not agree to any such third party so-called settlement, despite the fact the state third party action represented to "fully waive" the LHWCA lien" in the amount of $181,160.00. On the other hand if Mr. Hansen was not covered by the LHWCA as alleged by the LHWCA employer the seaman's employer also Caldwell would be required by law to provide Maintenance and Cure although Caldwell also refused to provide Maintenance and Cure.

In short the maritime employer Caldwell and its insurer Wausau Insurance Companies envisioned they could refuse all forms of maritime compensation and medical in

each their perceived mutually exclusive capacities, thus leaving Mr. Hansen and his family without any coverage whatsoever. Clearly demonstrating that the "Zone of Uncertainty" remains alive and well today. In short the employer and carrier are attempting to escape proving compensation and medical care to its injured employee under both the LHWCA and General Maritime laws by taking inconsistent defenses as to Mr. Hansen's status as either a LHWCA employee of a Seaman.

We the petitioners do not believe this was the intention of the United States Congress when developing the Maritime Acts and General maritime Laws nor do we believe Congress intended to create an avenue for employers and insurance carriers to jeopardize the health and welfare of the maritime work force of America.

Given the fact that funds in dispute which were never delivered to Mr. Hansen and continue to be withheld for the prior state action until a Court of competent jurisdiction address the issue concerning the employers assumed LHWCA lien now estimated at a value of $223,000.00 and the putative lien which arises out of the provisions within the LHWCA and no other court appearing to have jurisdiction over the matter. We now pray the United States Supreme Court grants Certiorari and addresses the extraordinary issues now presented.

History and case law clearly demonstrates numerous lower courts and the U.S. Supreme Courts struggle with the current state of the Federal Maritime laws and the federal maritime workers compensation schemes. The within petition is presented to the U.S. Supreme Court as a prime example of the unfair and unconstitutional advantage a maritime employer has over a injured suspecting maritime employee and his family members. It is one thing to have a adversarial process within our judicial system, however it is quite another to entertain a judicial process that is riddled with confusion and ambiguities which severs no justice and ignores the intention of the United States Congress to protect the maritime work force.

It is difficult to believe that after nearly two hundred years and the enormous amount of litigation caused by the conflicts between the LHWCA, Jones Act and General maritime Laws that still today their remains no clear direction or fairness within our maritime judicial system.

I in a Pro Se capacity now present this petition not only for myself and family members but also for every injured maritime employee whom in the future may too become the victims of the current state of the federal maritime laws and feel it is my duty as a citizen of the United States to bring this matter to the attention of the United States Supreme Court. I also wish to remind this honorable court of their prior opinions

that a seaman is considered a ward of the Admiralty courts and the party claiming to have obtained a seaman's release has the burden of proof and that seaman's releases are closely scrutinized *See Garrett v. Moore-McCormack Co., 1942, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed 239 and Thompson v. Coastal Oil Co., 352 U.S. 862,, 77 Sup Ct. 90 1 L.Ed 2nd 73 (1956)* and the U.S. Supreme Court decision concerning a section 908 (i) application in *Southwest Marine, Inc. v. Gizoni 502 U.S. 81 (1991)*. In *Gizoni*, in which a rigger foreman was injured and his employer voluntarily paid LHWCA benefits. The Claimant subsequently sued the employer for negligence under the Jones Act. The Court held that the mere receipt of voluntarily paid LHWCA benefits did not, in and of itself, preclude a seaman status inquiry in a Jones Act proceeding. In light of the fact that no releases were ever executed in the prior third party state action with the exception of the now disapproved section 908(i) application and the LHWCA employer Caldwell represents they did not participate in or agree to the state third party action and now allege the state action was intended to resolve a Jones Act complaint against the employer whom ironically is also Caldwell.

Clearly since the funds continued to be withheld due to the "employers" assumed LHWCA lien despite the so-called lien was fully waived combined with the fact the seaman's employer, also Caldwell failed to provide maintenance and

cure this demonstrates the inconsistent position and defenses asserted by the employer and insurance carrier in an attempt to deny all forms of medical care and compensation by attempting to abuse the so-called "mutually exclusive" nature of the conflicting LHWCA and the Jones Act as well as the General Maritime Laws.

In closing I can only say that the current state of the maritime laws, which were in fact developed to protect the maritime work force of America, has failed.

CONCLUSION

I believe the difficult questions concerning the conflicts of the present maritime laws now presented to this honorable High Court are worthy of granting Certiorari.

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Respectfully submitted by:

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